

Q by Mr. *Mittra* (defendant's Counsel).—What did his father say?

Mr. *M. P. Gasper* objected.

Mr. *Mittra* contended that the question was admissible under s. 32, cl 5 and illustration (l.) of the Evidence Act.

TREVELYAN, J.—I think the question is inadmissible. I do not think the statement of the father as to the date of the son's birth is evidence. Illustration (l) to s. 32 would be material in cases of pedigree; but the rule which admits hearsay evidence in pedigree cases is confined to the proof of the pedigree, and does not apply to proof of the facts which constitute a pedigree, such as birth, death and marriage when they have to be proved for other purposes. See *Haines v. Guthrie* (1).

This question does not come under para. 5 of s. 32 or any other paragraph of that section.

Attorney for plaintiff: Baboo *Bolye Chund Dutt*.

Attorneys for defendant: Messrs. *Bose & Bose*.

T. A. P.

1886

BIPIN
BEHARY
DAW
v.
SREEDAM
CHUNDER
DEY.

REFERENCE FROM THE BOARD OF REVENUE.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot and Mr. Justice Trevelyan.

In re THE KONDOLI TEA Co., LD.*

Stamp Act (I of 1879), Art. 21, Sch. I.—Conveyance by vendors under one denomination to the same persons purchasers under another denomination.

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April 3.

Eight persons, the owners of a tea estate, purported to convey their rights in the estate to a Company; the consideration expressed in the deed of conveyance being £43,320, payable in shares and debentures of the Company taken at par.

The only shareholders or debenture-holders of the Company were the eight persons who purported to sell the estate to the Company.

Held, that, although the conveying parties were the shareholders of the Company, there was just as much a sale and transfer of the property and a change of ownership as there would have been if the shareholders had been different persons; and that the proper duty payable on the conveyance was therefore that mentioned in Art. 21, Sch. I of the Stamp Act.

* Reference No. 1 of 1886 under s. 46 of the Stamp Act, made by C. A. Samuells, Esq., Offg. Secretary to the Board of Revenue, dated the 18th of February 1816.

(1) L. R., 13 Q. B. D., 818.

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REFERENCE to the High Court under s. 46 of Act I of 1879.

On the 8th October 1885 the attorneys of the Kondoli Tea Co. presented to the Collector of Stamps for adjudication of stamp duty, under s. 30 of the Stamp Act, an unexecuted deed of assignment of a tea estate, called the Nowgong Tea Estate, purporting to be made between E. D. Wylie of the first part, W. P. Mackinnon of the second part, W. Mackinnon, P. Mackinnon, D. Mackinnon, N. Mackinnon, T. M. Russell and William Peddie Alexander of the third part; J. Macalister Hall of the fourth part; Thomas Henderson of the fifth part, and the Kondoli Tea Company, Ltd., of the sixth part.

The consideration for this assignment from the 1st, 2nd, 3rd, 4th, and 5th parties to the Company was stated to be £43,320 of which a portion was to be paid in debentures of the Company and the remainder in shares in the capital stock of the Company; there being no actual cash payment of any portion of the intended purchase money.

The only shareholders and debenture-holders in the Kondoli Tea Co., Ltd., were the individuals who purported to sell the property, and it was, therefore, submitted that the only effect of the conveyance would be that the nominal ownership in the property would be changed, the actual beneficial interest still belonging to the vendors in their character of debenture-holders and shareholders of the Company; and that it was not the intention of the legislature that a nominal transfer of this description should be subject to an *ad valorem* duty calculated on a nominal price.

The Collector submitted the case through the Commissioner of the Presidency Division to the Board of Revenue, expressing his opinion that the instrument was an intended conveyance of a tea estate as a going concern; the consideration £43,320 intended partly to be paid in capital stock and partly in debentures of the Company; and that, therefore, on the authority of *In re Menglas Tea Estate* (1), the deed was chargeable with *ad valorem* duty of Rs 4,335.

The Board of Revenue were of opinion that, so long as the transfer was one between the existing owners under one denomination, to the same persons only under different nomenclature,

(1) 1. L. R., 12 Cal., 383.

the document could not properly be considered as a conveyance, and that, therefore, the duty payable on it was that laid down under Art. 60(b) of Sch. I. of the Stamp Act; they however referred the question to the High Court.

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Mr. *Stokoe* for the Company.—The instrument is not a conveyance on sale as defined in s. 3 of the Stamp Act; it is merely a transfer of property. In *Denn v. Diamond* (1), Holroyd, J., says: "A sale imports a *quid pro quo* enuring to the party selling." In that case the form of the document was that of a deed of sale, but the Court held it was not a purchase by the son. The form of a document is not a sufficient basis to go upon in determining the character of an instrument; the interest we get in the land as a Company is the same as we had in it in our private capacity. In *Christie v. Commissioners of Land Revenue* (2), Kelly, C. B., says: "The substance of a transaction is alone to be considered upon the question whether an instrument is liable to stamp duty." In *the matter of the Maharajah of Durbhunga* (3), the Court in determining the questions raised followed this rule. The case of *Ex parte Hill* (4) is one under s. 7 of the Stamp Act. In *re The Port Canning Co., Ltd.* (5), it is decided that no *ad valorem* duty is payable upon a conveyance where the consideration consists of shares in a public Company. Section 21 of the Stamp Act might meet this case.

The case of a *Reference under Stamp Act*, s. 46 (6), is distinguishable; it is no authority in the face of the cases cited above.

The *Advocate-General* (Mr. *Paul*) for the Crown was not called upon.

The opinion of the Court was delivered by

PETHERAM, C.J.—The question in this case is, whether a document carrying out a particular transaction is a conveyance within the meaning of the definition contained in clause 9 of s. 3 of the Stamp Act, and within the meaning of Art. 21 of Sch. I of that Act.

(1) 4 B. & C., 243.

(4) I. L. R. 8 Calc., 254.

(2) L. R. 2 Exch. 46.

(5) 16 W. R., 208.

(3) I. L. R. 7 Calc., 21.

(6) I. L. R. 7 Mad. 350.

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The document, upon the face of it, professes to be a conveyance of a tea garden from eight gentlemen to the Kondoli Tea Company, Limited, in consideration of £43,320, the said consideration being payable in shares and debentures of the Company taken at *par*.

It is said that that is not what the real transaction is; because the only shareholders in the Kondoli Tea Company are the eight gentlemen who conveyed the estate, and that therefore it was not really a conveyance or transfer by way of sale, but a mere handing over of the property from them in one name to themselves under another name.

I think that is a fallacy. Whoever the shareholders in the Kondoli Tea Company, Limited, were, I think the Kondoli Tea Company, Limited, was a separate person, a separate body, and a conveyance to the Kondoli Tea Company, Limited, of property which was the property of the sharers in their individual capacity, was just as much a conveyance, a transfer of the property as if the shareholders in the Company had been totally different persons.

This is the only thing that I think it necessary for us to say in giving judgment, namely, that, in my opinion, the Kondoli Tea Company, Limited, is a separate body; and for the purpose of seeing what their transactions are, I do not think it is possible to look at the Register of Shareholders to ascertain who the shareholders were; and, consequently, although the conveying parties here were the shareholders of the Company, there was just as much a sale and transfer of the property and a change of ownership as there would have been if the shareholders had been different persons.

I, therefore, think that the proper stamp to be put upon this document is the *ad valorem* stamp mentioned in Art. 21 of Sch. I of the Stamp Act, and that it must be calculated on the amount of the consideration mentioned in the instrument.

Attorneys for the Company : Messrs. *Barrow & Orr*.

Attorney for the Crown : The *Government Solicitor*, Mr.
R. L. Upton.

T. A. P.